

Amy L. Comstock
Director
U.S. Office of Government Ethics
Plenary Session Speech
11th Annual Government Ethics Conference
Tuesday, December 4, 2001

Good morning, everyone! It is a privilege to be able to welcome you to the 11th Annual Government Ethics Conference. I want to thank all of you for participating and to give a special thanks to those participants who are also serving as moderators and panelists for our concurrent sessions. Your willingness to share your experiences and expertise is what makes this conference valuable to us all.

I would also like to thank Barbara Mullen-Roth, Associate Director for Education and Program Services, and the conference staff, Gwen Cannon-Jenkins, Kaneisha Cunningham, Marilyn Bennett, Veda Marshall, and Denise Shelton. They have worked extremely hard for the past 12 weeks to put this rescheduled conference together. Rescheduling an event of this magnitude in just a matter of weeks is a huge task and I can't thank them enough for all of their excellent work.

Of course, all of us in this room are conscious today of the sad fact that the ethics conference originally scheduled for this year ended abruptly on September 11th. For the benefit of both those who were here that day and those who were not, I want to commend everyone who was in Norfolk on September 11 and 12 for the way that this community responded. While I have known many of you for years as colleagues, in those 24 hours I witnessed such caring and mutual support for each other, that I now know more than ever that the ethics profession attracts very caring and wonderful human beings.

And, for those of us who were in Norfolk that morning, we will always remember Judge Gonzales' speech with great sadness, because that is where we were when the terrorist attacks started. But I do not want our deep feelings about the events of that day and thereafter to overshadow the contents of Judge Gonzales' speech. Needless to say, we did not ask Judge Gonzales to return again this December. But his speech is very much a part of this conference and some of his remarks bear repeating.

Judge Gonzales began by showering great praise on everyone who worked on the nominee process during the transition. He noted the phenomenal number of nominees who were cleared successfully and recognized that without the people in this room, the White House could not have moved this group nearly as quickly as it did. Beyond the transition, however, Judge Gonzales noted that the executive branch ethics program needs significant improvement and acknowledged that he sees this time as a time of real growth and change in the ethics community. He mentioned, in particular, the need for the financial disclosure requirements to match the reality of people's personal finances and the importance that the conflict of interest requirements not be a trap for the unwary. I am very pleased that he also acknowledged with great confidence that the best ideas for improving the system will come from the people in this room.

I agree with Judge Gonzales' assessment that we are at the beginning of a time of great change in the executive branch ethics program and I find this exciting. As you all know, I came to OGE, having been

an OGE customer for years, with a strong belief that the executive branch ethics program needed a lot of change in both its focus and the technicalities. After having been Director for just over one year, I continue to believe that the program needs strengthening.

To put it bluntly, I believe that our rules are often complicated, our systems are at times bureaucratic, and our work is not always closely enough aligned with the ultimate mission of an agency. However, I also firmly believe that in order to achieve our goal of preventing conflicts of interest and ultimately increasing public confidence in government, we must have a strong executive branch ethics program.

Trying to effect change in the ethics program's focus and implementation is a tall order. We have a number of initiatives under way at OGE now and you will hear about them in detail at this afternoon's manager's update. But in terms of the larger perspective, I want to tell you this morning that in a number of different ways OGE is committed to strengthening and improving itself and the ethics program. As you know, earlier this year we proposed legislation to the Hill that would improve the financial disclosure system. We have also begun a process for a thorough review of the criminal conflict of interest statutes.

I consider this review of the conflict of interest statutes to be one of the most important initiatives that OGE is undertaking. The last comprehensive examination of these laws occurred in 1989, and much has changed inside the government and out since then. There have been sustained government efforts toward privatization of certain functions; people's personal financial investments are very different; we have seen an increasing reliance on personnel with scientific and technological expertise; and there have been a series of decisions by the courts that have called into question the appropriate scope of certain restrictions on the outside activities of Federal employees. Yet our statutes and regulations have not adapted to this changing government.

Furthermore, OGE's own experience over the years in applying these laws in a modern context has led us to question whether some of the current restrictions may be unnecessarily broad in light of their original legislative purposes. For example, the anti-representational restrictions in §§ 203 and 205 were intended by Congress primarily to prevent the use of undue influence by Federal employees on behalf of private parties. Yet these statutes currently prohibit conduct that would appear to pose little risk of such influence. For example, a lower graded Department of Transportation employee's communications with the Social Security Administration to help a neighbor negotiate through the benefits application process is essentially benign conduct.

We also believe there may be other areas in which the current laws are actually too narrow to capture real conflicts that are of concern to this Administration and the public, and we would like to explore possible changes in that direction as well.

In addition to this statutory review, we have also committed to an internal review of many of OGE's mandated processes to ensure that they are all as efficient and streamlined as possible.

These various reviews go to the laws and regulations that are the tools of our program. But I also came to this job with a commitment to change the perception of the executive branch ethics program, and bringing about a change in perception is much harder. Which brings us to the issue of leadership.

"Leadership" has become a popular topic when people discuss "ethics," and it should be.

It is extremely important to the executive branch that on Inauguration Day, President Bush issued his memorandum on the importance of abiding by the Standards of Conduct and the 14 Principles that establish our responsibilities as public servants. Study after study provides growing evidence that ethical leadership, and what is euphemistically called "walking the talk" is an absolute "must" for any organization that wishes to have a strong ethics program. If the leadership of an organization does not believe in, and incorporate into its daily work, the values espoused by an organization, no one else in the organization will either. But, what does it mean for leaders to walk the talk in a government ethics program.

Quite frankly, while it is very important that the President and the cabinet espouse the ethical principles of the administration, broad ethical statements do not immediately translate themselves into the daily work of an agency. First, as you all know better than anyone, in the executive branch alone we have as many missions as there are agencies. It continues to amaze me how different the ethics programs can be in the agencies, depending on their issues.

Second, our government is designed so that its leadership at the highest level turns over every four to eight years. This turnover is very important to our democratic society, but it also strongly impacts the ethics community. Our most visible clients are constantly changing and for the bulk of our workforce of nearly 4 million, the senior leadership can be a fairly fluid group. This is not something that the private sector has to deal with as regularly and predictably and it poses quite a hurdle if you accept the theory that ethically active leadership is a primary facet of an ethical organization.

But this does not excuse us from our responsibility for leadership. So, that brings us to the question of what is leadership in a government agency? Who are the leaders?

I want to offer you my view that leadership comes in many packages and that in a government agency, leadership is not just the Secretary and the new group of Senate-confirmed appointees that arrive with a new Administration. Leadership is the most senior career management, and all supervisors. It is very important here that I mentioned all supervisors. For the average employee, they are their primary leader.

I believe OGE needs to do more to target this group and this level of leadership. We are working on training targeted towards first line supervisors and their responsibility for the ethics programs. But this

shouldn't just be OGE's issue. I would encourage all of you, as you plan your training for the coming year, to consider reaching out to supervisors with specially designed training.

Finally, as DAEO's and ethics officials, we also have to take the responsibility that comes with leadership. It is a fair question, though, to ask what I mean by accepting responsibility for leadership. Accepting responsibility for leadership means working to make it visible that you are incorporating ethical principles, rules, and values into your daily work. How does one, practically, go about incorporating ethical principles into our daily work? For everyone, it means asking the question "does this raise any ethical problems?" Being a leader also involves accepting the responsibility for the agency's mission. It means asking the questions "does this outcome further the mission of the agency," and "is this a good result?" For ethics officials, I think it is especially important to give guidance and advice that takes into account the work of the agency. If someone seeks to do something that is a problem under our ethics rules, don't stop with a "no" answer. It is our job, as ethics officials, to search for solutions to issues that arise in our work that are ethically sound and that advance our agencies' missions, programs, and operations. If we do not integrate our programs into our agencies missions, our ethics programs will be marginalized and ineffective.

While OGE's leadership and policymaking responsibility is essential to steering our decentralized network of agency ethics officials, having a highly placed DAEO and an adequately staffed ethics office in every agency is critical because they are most likely to know best how to tailor ethics rules and policies to the unique needs and concerns of their agency. It has become a standard phrase that I use in describing the executive branch ethics program to say that it is the agency's ethics officials who breath life into the program that OGE oversees.

The vital role of agency ethics officials is one reason why it is so important to me that we expand the use of technology in our business in order to enhance communication within our community. But increasing our communication is not the only thing that will improve our program. In order to improve our program, I also think we need to admit where it is weak.

As you all probably know, ethics programs have become much more prevalent in the private sector in the last decade. And there is great discussion, among private sector ethics officials, about whether values-based programs, as opposed to the government's model of a compliance-based program, are actually more effective. For those of you who, like me a year ago, had not focused on this distinction, a compliance-based ethics program has actual rules that must be followed as opposed to educating on values with the belief that those values will be incorporated into an organization and result in the sought after behavior.

Now, I know theorists can disagree on which is a better system, and I can see value in both, but let me tell you a little about why I think we must always have a strong compliance component to our program. We must remember that there are almost 4 million people in the executive branch who speak and act on behalf of the administration. And, quite frankly, the decision was made, and I agree with it, that

with that large and diverse a workforce, set standards are the best assurance that inappropriate behavior will not occur.

But I want to share with you where I believe our compliance-based program falls short. If our ethics programs stop at compliance, we are not fulfilling our responsibilities as leaders. There can be consequences of a compliance based program that we have to guard against.

First, we have to guard against forgetting the root value of a rule and focusing only on the rule itself. I honestly don't think that we spend enough time talking to our own employees about the root value behind our rules. I have conducted literally hundreds of ethics training classes and I can't tell you that I have done this nearly as often as I should have. In fact, we have a gift rule to avoid the appearance of a bribe or the use of public office for private gain. We require public financial disclosure because it is part of our system that the American public has a right to assure itself that there is personal integrity in the highest levels of government. But we have a responsibility to explain to people the value behind what may seem to be just a rule and to remind them that the rules are not where ethical decision-making stops. It is a serious concern of mine that employees sometimes feel that minimum standards cover the whole thing. That is wrong. Our rules are just minimum standards of behavior. Compliance ensures that an employee won't be disciplined. These rules were never intended to completely replace executive level decision-making and our own sense of right and wrong. This must still be a part of every decision that we make.

But this possible shortfall in our program brings us back to the importance of the ethics official. Individually, and collectively, it is our job to act as leaders and run our programs in a way that makes sense, both because the program supports the mission and because it is rooted in core values. It is a very lucky employee who has an ethics official who provides honest advice that includes a good legal analysis, along with a strong recommendation based on the work of the agency, and the official's best judgement. This is critical to avoiding issues that may not necessarily be "prohibited" conduct under the ethics rules, but will create the appearance of impropriety for the agency and cause the public to question the integrity of the agency's programs and public service as a whole.

I hope that this conference can make its own contribution as we all work to continually strengthen and improve the executive branch ethics program, and thereby build public confidence in government.

And, on that note, I thank you for your attention.

I will be happy to answer any questions before we go into the first set of concurrent sessions. Enjoy the conference!